IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

WRIT PETITION NO. 9114 OF 2003 .

Mahendra L. Davavala & ors ... Petitioners.
V/s.
Smt. Shakuntala K.Davavala & ors... Respondents.

Miss Asha M. Bhambwani for the petitioner.

Shri V.M. Vaghela for the respondents.

CORAM : V.C.DAGA, J.

DATED : 22.12.2005.

P.C. :

. Heard rival parties.

. Perused petition.

2. Rule returnable forthwith by consent of parties.

3. This petition is directed against the impugned order dated 3.12.2003 passed by the Small Cause Court, Mumbai, in RAE Suit No.666/1025 of 2003, refusing to take written statement of the defendant on record in view of the judgment of this Court in the case of **Chefna w/o Harish Awai vs. Harish s/o Wamanrao Awai**, 2003 (4) ALL MR 675.

4. Learned Judge of the Small Causes Court, has not recorded any reasons except relying upon judgment of the Division Bench of this Court. It was expected on the part of the trial Court to deal

with the contentions raised by rival parties and apply the law laid down by this Court in the facts and circumstances of the case. At this stage, it will not be out of place to refer to the judgment of the Apex Court in the case of **Salem Advocates Bar Association vs. Union of India**, 2005 (5) ALL MR (SC) 876 and in case of **Mr.Shaikh Salim Haji Abdul vs. Mr.Kumar & Sons** in Appeal (civil) No. 6907 of 2005 decided on 18.11.2005.

5. The impugned order is, accordingly set aside and petition is allowed.

6. The trial Court is directed to reconsider the application filed by the defendant in the light of these two judgments. The trial Court is expected to hear the application afresh as expeditiously as possible, at any rate, within four weeks from the date of receipt of the copy of this order.

7. Rule is made absolute in terms of this order with no order as to costs.

(V.C. DAGA, J.)